

# LAW ENFORCEMENT NEWS

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Is DEA DEA-D?

## Attorney general 'studying' DEA-FBI merger

The Reagan Administration is sending out strong signals that it means to change the structure of the Federal fight against drug trafficking, with the Drug Enforcement Administration either being swallowed up by the FBI and the Customs Service or the drug agency receiving substantial increase in support from both the FBI and Customs.

Attorney General William French Smith, in a speech before the Fraternal Order of Police in Washington D.C. May 27, said the Administration is "now studying the possibility of combining DEA with the FBI."

This announcement comes within weeks of the assertion by Senator Joseph Biden (D-Delaware), who sits on the Senate Judiciary subcommittee on

criminal justice, that the Reagan Administration is planning on dividing the DEA's duties between the FBI and the Customs Service.

Robert Feldkamp, director of public affairs for DEA, stated in a telephone interview with Law Enforcement News that as far as DEA administrators have been informed, the agency is not in danger of being gutted.

"DEA is about eight or nine years old and was established in 1973 as the Federal Government's lead agency in narcotics enforcement," Feldkamp said. "What the A-G and some of his men have been saying in the last few weeks is that they don't anticipate this concept as having changed, that is, having DEA as the lead agency."

Another high-ranking source within the narcotics agency gave a similar account of DEA management being reassured by Justice Department officials that the agency will continue to exist as the top Federal drug fighter.

Feldkamp noted that Smith had given similar indications of the Administration's intentions in a press conference held the week before his FOP speech, and that Smith has stressed giving DEA additional help from both the FBI and Customs.

But an aide to Senator Biden said the Senator had told reporters in a press conference during early May that "very reliable reports" from the Reagan Administration had come to his attention concerning the possible abolition of DEA.

The aide, Pete Smith, said that the same morning, Biden and other members of the Senate Judiciary Committee had received confirmation of those reports from the Attorney General during a breakfast meeting the DOJ chief had with the senators.

Biden's aide said the Senator agreed with the recommendation about DEA, "in the sense that that constituted a recognition of something he feels very strongly about, namely that DEA has done a pretty lousy job." But Smith



Wide World Photo

Attorney General William French Smith

added that Biden is inclined to "give the agency another chance, because they have been making improvements."

In his speech before the Fraternal Order of Police, Attorney General Smith was careful not to single out DEA for poor performance, instead blasting the

Continued on Page 13

## Silence is golden as Court moves to expand Miranda rights

In two decisions that may further broaden the Miranda rights of defendants, the Supreme Court ruled recently in separate cases that defendants don't have to talk at all with law enforcement officials once an initial request for a lawyer has been made, and that defendants can refuse to submit a psychiatrist's examination that might later be used to sentence them to death.

The justices ruled in *Edwards v. Arizona* that state officials had illegally continued to question a man about his involvement in a homicide after the suspect had told them he wanted an attorney "before making a deal."

The police left the suspect alone once the original request for the lawyer was made, but returned the following morning and began to question him again.

Writing for the majority, Associate Justice Byron R. White said that once a suspect in custody has asked for a lawyer, he can't be questioned in any fashion by the police unless the suspect "initiates further communication, exchanges or conversations with the police."

In ruling in favor of the defendant in the second case, *Estelle v. Smith*, the court held that when being questioned by a psychiatrist, defendants subjected to the death penalty should get protections similar to those they get when being interrogated by the police, including the right to remain silent, the right to consult a lawyer and the right to be informed of both protections.

The decision, written by Chief Justice Warren Burger, is based largely on an extension of rights granted in *Miranda v. Arizona* in 1966, when the court ruled that police had to warn a person held in custody that he or she had the right to remain silent and consult with an attorney.

## Indianapolis honors slain lawmen



Indianapolis Star photo/William A. Dales

Members of the Indianapolis Police Department's motorcycle drill team snap to attention during Peace Officers Memorial Day ceremonies on May 15 at Monument Circle in Indianapolis. Chaplains from the city police force, the Indiana State Police and the Marion County Sheriff's Department conducted the annual memorial services to honor three local officers killed in the past year.

# ...NewsBriefs... NewsBriefs... NewsBriefs...

## Feds try to smoke out nature of arson accelerants

While experts around the country grapple with the causes of the skyrocketing rate of arson, the Commerce Department's National Bureau of Standards is working on identifying the range of arsonist's tools.

Along with the Bureau of Alcohol, Tobacco and Firearms, the bureau's Center for Fire Research is engaged in a two-year study to classify what arson "accelerants" are, the most common of which are gasoline, kerosene and paint thinner.

Experts say that with the development of an acceptable set of standards lab personnel will have an easier time having their testimony on suspected cases of arson with stand court scrutiny. This, researchers hope, will result in better arson investigations and better conviction rates as well.

The research bureau plans to ask selected laboratories to analyze each of approximately 10 separate prepared samples of accelerants according to a proposed set of guidelines, and the results will be measured to see if the guidelines are adequate for investigators' needs.

## Human rights panel charges Oklahomans are afraid of cops

A preview of a six-month study of police-community relations by the Oklahoma Human Rights Commission says residents of that state "are afraid of their police," according to published newspaper accounts there.

The Tulsa *World* reported that the commission's report, which was based on interviews with law enforcement personnel and citizen's group leaders, will call for changes in the state's "fleeing felon" statutes to allow the use of deadly force solely against persons suspected of committing "forcible or atrocious" felonies.

Current statutes allow the use of deadly force in the apprehension of offenders

in such non-violent cases as embezzlement, indecent exposure, perjury and the theft of property valued at less than \$20. If approved by the state legislature, the new statutes would ban the use of deadly force in those instances.

A number of complaints have been made against the use of deadly force by police in several of the state's cities in recent months, according to the *World's* report.

Other recommendations by the Human Rights Commission, according to the news account, include:

- Prosecution by the state's attorney general of all cases of serious police misconduct, with "investigative support" from the Oklahoma State Bureau of Investigation;
- Insurance of police officers against injuries received by citizens as a result of excessive force;
- A role for citizens' groups in formulating police policy; and
- The development of programs by the state's Department of Mental Health to help deal with the "serious problems of police stress."

## LA says '10-4' to new cop cars, but state aid cuts still face city

In the latest stage of a political tug of war out west, the Los Angeles City Council has decided to give the city's police department \$1.46 million to replace 114 old police cars and 24 motorcycles.

But, as the *Los Angeles Times* pointed out late last month, this budget vote could bear small resemblance to the final budget the city council eventually prepares. The council still must find out from Sacramento what state aid the city will get.

Council finance committee chairman Marvin Braude indicated recently, according to the *Times*, that the city will get "significantly less" than the \$80 million in state aid Mayor Tom Bradley is counting on to balance his \$1.45 billion budget proposal.

What the state legislature does decide to give in aid to the city will have a significant effect on the total budget picture. The picture may be changed further still by reductions in Federal aid to state social service programs. The extent of state assistance will not be known until the early part of the summer, with more concrete information about Federal aid probably not available until the fall. Some officials note that two more budget revisions over the current estimation is not an unreasonable prospect.

Bradley had wanted to use the patrol, car and motorcycle replacement funds to delay approximately 600 possible layoffs for two months. The money had come from additional revenue discovered between the time Bradley made his original budget proposal and when the council began its budget deliberations.

But the council decided to go along with Bradley in exempting the police, fire and sanitation departments from a mandatory 15 percent reduction ordered from all departmental budget requests.

## Electronic warfare slated for Texas gov's 'war on drugs'

Texas Governor William Clements appears to be on the verge of winning another victory with the package of bills he has submitted to the state legislature in his so-called "war on drugs" program.

The latest bill, which would allow law officers to place wiretaps on telephones and eavesdropping devices in the homes and businesses of suspected drug dealers, passed the Senate in late May and was awaiting House approval of a similar version to its measure before gaining the almost certain signature by the governor.

Proponents of the bill, which passed the Senate 23-to-5, said the bill would help law enforcement officials take drug dealers off the streets. According to the *Houston Chronicle*, one supporter said law abiding citizens do not care whether they are being "bugged" because they have nothing to hide.

But an opponent of the bill, disturbed by the possible infringement on in-

dividual civil liberties that the law might lead to, asked the *Chronicle*. "If you can't have privacy in your own home, what else is left?"

The bill passed by the Senate contains several amendments and must still be voted on in the House since the amendments did not appear in the original version that was presented in the House. Senator Ed Howard, the bill's Senate sponsor, told the *Chronicle* he felt the legislation would have no trouble getting House approval.

Governor Clements had predicted the bill's passage despite its getting bogged down in committee with 11 days remaining in the legislative session.

As amended in the Senate, the bill would give the Department of Public Safety authority to ask one of nine designated judges for an order allowing DPS officials to tap telephones in question. The bill would also allow DPS officers or other law enforcement officials with DPS supervision to secretly enter homes of suspected felony drug traffickers to plant eavesdropping devices.

## DoJ official urges limiting uses of insanity defense

The head of the Justice Department's criminal division has gone on record as saying the use of the insanity defense should be curtailed.

"My own opinion is that it ought to be simply arbitrarily limited as a mitigating factor in first-degree murders, limited to reducing it to second-degree," D. Lowell Jensen was quoted by the United Press International as saying.

Although the prosecutor emphasized that it was strictly a personal opinion, his observations on claims of insanity echoed recent concerns voiced by both Presidential counselor Edwin Meese III and Rudolph Giuliani, the number-three man in the Justice Department.

Some have speculated that insanity may be used in the defense of John W. Hinckley, who is currently undergoing psychiatric tests in connection with his alleged attempt to assassinate President Reagan.

## Put more bulk in your diet

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Please stop in the name of the law...

## DC cops' stop-and-question tactics outlawed

A top-ranking official of Washington, D.C.'s police union has blasted a recent Federal judge's ruling prohibiting police from stopping citizens on the street and having them account for their whereabouts, calling the judge's ruling another step in a process of "slowly but surely preventing the police officer from doing his job."

Senior Federal judge Edward M. Curran ruled in the class-action case, which originally began in 1967 as a contest of the now-invalid vagrancy law, that the process of stopping individuals on the street violates personal privacy protections set out in the Fourth Amendment to the Constitution.

Lawyers for the city and its police argued that such encounters between the police and citizens were merely "contacts" and needed no justification since a pedestrian was not required to cooperate with police.

Larry Melton, vice president of Local 442 of the International Brotherhood of Police Officers, said of Curran's decision, "The problem with that [the ruling] is

that many of these officers... have worked their beats for quite some time and they know a lot of people in the area and that's one reason why you're taking a valuable tool away from the officers.

"There's also the fact that the courts have ruled in the past that the officers have what they call a 'sixth sense,'" Melton told Law Enforcement News. "That sense that he cannot put his finger on a real probable cause but he has a reasonable belief that there's something not quite right in a situation that he's confronted with. The mere fact of him stopping somebody and asking that question could prevent a crime or maybe pick someone up who has committed a crime."

Court decisions have held in the past that police must have reasonable grounds to believe that criminal activity has occurred or is about to occur.

Attorneys for citizens' groups in the case argued against the city's contention that such encounters are merely "contacts," stating that the simple presence of a police officer with a badge and a gun

would make most pedestrians feel compelled to cooperate.

The Washington Post reported a survey of police department records showing that approximately 7,000 such encounters occur each year in which officer approach pedestrians, question them and make out index cards for police files. The Post reported that explanations from such encounters included statements like "subject carrying a heavy green bag" and subjects were "just on the way to the store."

A general order from the police department defining "contacts" has been in effect in Washington since 1973.

But Melton also argued that the judge's ruling is an example of the courts being out of step with the general public. "If the courts continue to interpret the law like they've done with this case, then you're taking away a tool and you're putting another tool into the hands of the criminal."

"If you're not doing anything wrong and your are a so-called 'law abiding citizen,'" Melton said, "and you want the

right to walk the streets out there without the fear of being mugged, then you have to give up some of your rights as far as people questioning strangers. If you haven't done anything wrong, then me coming up to you and asking you 'Sir...' in a polite manner, and I don't mean that the police have to be accusative about it, but to question your presence, you're talking about a five, ten-minute conversation, and then you can go about your way and the average citizen can walk the streets in safety. For every one that we have to apologize to, say 'thank you ma'am and have a nice day,' we're going to get someone who doesn't belong there, that could be waiting for you to come along."

Assistant D. C. Corporation Counsel Michael E. Zielinski, who represented the police department in the lawsuit, said the city plans to ask the Federal judge to postpone the effect of his order until it can be taken to the U. S. Court of Appeals for review.

The judge's ruling gives the police department 15 days to draft a "brief, clear and lawful" order to be given to police officers, directing them to stop making illegal contacts with citizens. The proposed order would then be submitted to the courts for approval.

### Gulf Coast reefer madness:

## GAO sees surge in Texas drug-running

Texans, long accustomed to reading stories in their newspapers about drug smuggling along their coastal shoreline, can expect to be reading more of the same in the foreseeable future, according to a study produced by the U.S. General Accounting Office.

According to the Houston Chronicle, the report says trafficking will increase due to the additional emphasis the Coast Guard is placing on catching smugglers along the Florida coastline, as well as the loss in Coast Guard personnel involved in Texas drug enforcement that was suffered with the influx of Cuban refugees.

The report, prepared at the request of Senator Lloyd Bentsen (D-Texas), describes a "smuggling infrastructure" that was built up when the Coast Guard began aiding the refugee sealift. The report also notes that the Coast Guard

spends most of its time and personnel in Florida since that is still where the bulk of marijuana is smuggled into the United States.

That concentration "has led some drug smuggling operations to relocate to other areas, including Texas," the GAO report says.

"Resource limitations" are preventing the Coast Guard from "adequately fulfilling its mission," the report notes. The Coast Guard estimates it seizes between 15 and 20 percent of the marijuana smuggled in by sea. It has set a goal of 75 percent of the total "to detect or deter," reducing the profitability of smuggling the drugs.

Coast Guard statistics, as reported by the Chronicle, show that 208,000 pounds of marijuana were seized in the Texas coastal area in 1979. In 1980, including

the period of the Cuban sealift, 68,000 pounds were seized.

But after the refugee effort, in the first three-month reporting period for 1981, 118,400 pounds were seized.

The Texas senator called the results of the GAO report "disturbing" and asserted the Coast Guard had not been given adequate tools to do its job effectively. He noted that in the decade from 1969 to 1979 the number of Coast Guard cutters had decreased from 339 to 246.

The GAO report said that the number of cutters had not increased during the past year in spite of the reported increase in smuggling efforts. The number of helicopters has also not increased, the report said, and one of its airplanes has been deactivated without replacement.

## Las Vegas to pay less for Metro policing

All that is needed is Nevada Gov. Richard List's signature in order for a bill to become law that would reduce Las Vegas resident's share in paying for their city/county Metro police force and relieve the municipality of an obligation to build a new jail.

The bill, passed by both houses of the legislature, reduces the city's obligation to covering Metro police costs from 47 percent of the total to 45.1 percent. Other Clark County residents will shoulder the 1.9 percent increase in costs. The total tab for running the Metro force is approximately \$51 million annually.

According to Marsha Hudgins, a management analyst with the city, the municipality had objected on state constitutional grounds to the ratio of city-county payments ever since the formula began in 1973.

"Part of the reason we contended all along that it was unconstitutional was that there was a set percentage in the bill from the time it was passed in '73 until the present," Hudgins told Law Enforcement News. (For example), the city pays 50 percent and the county pays 50 percent."

The analyst said that Nevada, like many states, has a provision in its state constitution that all state laws are general in nature, while this law had been written specifically for Las Vegas and Clark County.

"What this bill does, instead of putting a percentage, is it gives a formula that would be able to move up and down with whatever the current law enforcement statistics are in the communities," Hudgins continued. "As it happens, we anticipate this year it will be 45.1 percent. The next fiscal year it will probably be lower."

The issue of city and county growth versus proportionate payment of services is not new to this Nevada area. The Las Vegas Sun said in its description of the

## Pros and cons fly as NCCD panelists clash over need, practicality of handgun controls

By EDWARD DIAMOND

If the arguments made, pro and con, before the National Council on Crime and Delinquency's recent symposium on "Crime and the Handgun" sounded all too familiar to many of those hearing them, public attention focused on recent assassination attempts on prominent figures seemed to give even the most rehearsed line of reasoning a special sense of urgency.

A society confused by reports of increases in violent deaths, and the spread of small weapons was reflected in the audience that was all too eager to ask unanswerable questions, and in panelists reduced to lunging at each other in piques of rage.

Both supporters and opponents of gun control were represented by two speakers, all of whom have been prodigious writers in the field. Representing those who favor gun control were Michael Beard, the executive director of the National Coalition to Ban Handguns, and John J. Buckley, the former sheriff of Middlesex County, Massachusetts. The anti-gun control forces were spoken for by Mark Benenson, an attorney and

National Rifle Association member, and Don B. Kates Jr., an attorney and law professor from the San Francisco area.

To Beard, the most frightening part of the problem is "turning our own children into killers by making [guns] available." The chief of the anti-handgun lobby came well-armed with statistics buttressing his case: 22,000 handgun deaths each year; 300,000 violent crimes committed with handguns in the United States in 1980; a Surgeon General's report listing handguns as second only to the automobile as a cause of accidental death in America; 30 million handguns currently in private possession, increasing at 2.5 million each year; 225,000 firearms stolen last year, according to the Bureau of Alcohol and Firearms and 12,000 handgun suicides last year.

All of these statistics pale, according to Don Kates, behind the obvious question: "How are you going to get a single criminal to give up his handgun?" Kates said the literature on handguns is "remarkable deficient" in answers to the question of getting criminals to give up handguns..

Kates maintained that the argument

about controlling handguns in society is, in fact, a red herring for the discussion that should be taking place about violent crimes. "The amount of violence in a society," the law professor noted, "is determined by the number of dangerously violent people in that society, something which is determined not by gun laws, but by social conditions."

It was left to NRA member Mark Benenson to make the constitutional argument. He also compared gun owners to camera buffs and said that the \$3-to-4 billion it would take to register handguns would not be "practical." He also tried to limit perceptions of the gun industry as having tremendous significance in the NRA. "They [the NRA] are afraid of getting involved in this type of controversy," he asserted.

Benenson warned the conference about advocating handgun legislation. "In any democratic society, one has to be terribly hesitant about passing laws that are not likely to be obeyed," the attorney stated. "And the experience we have already had with gun licensing and registration

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# People & Places

## Chiefs' group adds a PERF-ect dozen

The Police Executive Research Forum (PERF) a national organization of major-city police executives, continues to expand, with the addition of 12 new members to its 60-person organization.

The new inductees will join the full membership at the group's annual meeting June 7-9 in Washington, D.C., when the organization will be meeting with officials from both the Reagan Administration and the Congress to discuss future law enforcement assistance plans.

Officials scheduled to be included in those discussions are Lowell Jensen, Assistant Attorney General for the Criminal Division; the heads of DEA, ATF, the Secret Service, the Bureau of Justice Statistics and LEAA, and members of

the House and Senate.

The new forum members are: Chief Anthony V. Bouza, Minneapolis, Minnesota; Superintendent Richard J. Brzeczek, Chicago, Illinois; Chief James J. Carvina, Racine, Wisconsin; Director E. Winslow Chapman, Memphis, Tennessee; Chief Kenneth F. Conlon, Davenport, Iowa, and Commissioner Charles P. Connolly, Yonkers, New York.

Also, Chief George K. Hansen, Fresno, California; Chief Tom L. Heggy, Oklahoma City, Oklahoma; Chief John P. Kearns, Sacramento, California; Chief Travis L. Lynch, Macon, Georgia; Chief William C. McHugh, Evanston, Illinois, and Chief Charles C. Plummer, Hayward, California.

## Shut-in shuts out Tulsa burglars

Southeast Tulsa may have the closest thing to a free, live-in private security system for watching houses and shops. Bob Shelton, 54, a semi-shut-in since open heart surgery in 1975, uses eight police bands, binoculars and a zeal for spotting peculiar activity to aid law enforcement officials.

Shelton, according to the *Sunday Oklahoman*, has contributed to the arrest of more than 200 persons and has testified at approximately 20 court proceedings involving crimes he's witnessed over the past several years.

He has a monitor in his living room and another in his bedroom that looks out on the back of a bar, a drug-store and a library. He takes notes of anything he

sees that looks suspicious. When he doesn't have a pad, Shelton has been known to use the next best thing, his palm.

"I can't sit here for a single day without witnessing at least two crimes," he told the *Oklahoman*.

## Park and lock it

When Sheriff Gene Barksdale of Shelby County (Memphis), Tennessee, ran through his rules on how to prevent burglaries for June's "Burglary Month" — locking doors, connecting an automatic timer to a lamp, using burglar alarms, and lighting yards with outdoor lights — he didn't mention one method he used to keep his own daughter from being burglarized.

The sheriff parked a marked patrol car in his daughter's driveway while she was out of town.

When asked if he could provide the same service to other residents, the sheriff reportedly shot back: "That's ridiculous, and you know it."

The Memphis *Commercial Appeal*, which reported the original incident, said another wry county employee had a suggestion that went Barksdale's tactic even one better. "The sheriff," he said, "could issue decals so that ordinary citizens could make their own cars look just like a patrol car."

## Two heroes to go

You're Chicago Police Officer Michael Touhy and you've just responded to the "man with a gun at Herontin Hospital" call on March 20, 1981, when you're confronted with a suspect pointing a gun at fellow officer William Powers' head and threatening to blow it off. What to do?

If you're Touhy, you grab the armed man around the neck, jerking the gun away from your partner's head. When the suspect pulls away and starts firing, you return the fire, striking him several times.

For acts of heroism, both Officers Touhy and Powers have been awarded the Police Medal, the Chicago Police Department's highest award.

## A resourceful chief

Douglas R. Phelps is the new superintendent of the Indiana Department of Natural Resources' law enforcement division. Phelps, 42, has been ad-



Outdoor Indiana magazine  
Dennis Knipfing

**Superintendent Douglas Phelps**

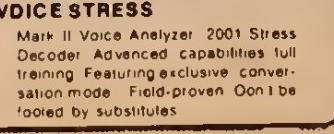
ministrative assistant at the division since 1977.

Prior to that he was an officer with the U.S. Marine Corps, having retired at the rank of captain after 22 years of service. His stay in the Corps also saw stints as intelligence officer and security officer.



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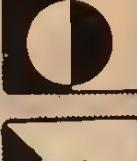

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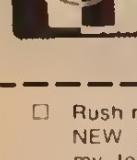

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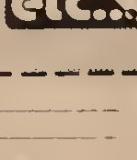

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# SUPREME COURT BRIEFS

By AVERY ELI OKIN



Undoubtedly the October 1980 term of the Supreme Court will go down as one of the stormiest in recent years. Plagued by internal frictions and bickering among the Justices, the Court's decisions have on several occasions highlighted the problem.

The most recent example surfaced on April 27 in the form of separate concurrence and dissent to a denial of a petition for a writ of certiorari. In that case, which involved a request for a hearing by a convicted murderer, a dissenting Justice Rehnquist wrote: "I do not think this Court can continue to evade some responsibility for this mockery of our criminal justice system." Continuing with that thought, Justice Rehnquist noted that when "our systems of administering criminal justice cannot provide security to our people in the streets or in their homes, we are rapidly approaching the state of savagery . . ."

In an uncharacteristic gesture, the Justice revealed that even the Supreme Court and its employees are not immune from being victims of criminal conduct. Without giving details, Justice Rehnquist bitterly articulated the well-kept fact that "law enforcement authorities cannot protect the lives of employees of this very Court who live four blocks from the building in which we sit and deliberate the constitutionality of capital punishment."

Jumping from the "happened-in-our-backyard" argument to the unconstitutional sphere of the right of the states to carry out capital punishment statutes, Justice Rehnquist observed that in the present case the denial of certiorari "in effect all but prevents the States from imposing a death sentence on

**Going, going, gone?**

## Omaha chief quits (again)

First you say you do, then you say you don't. Omaha police-chief watchers have had a while to get used to quick reversals when it comes to talk of the possible retirement of Chief Richard Anderson.

This time, the Omaha *World-Herald* says, Anderson is *really* leaving.

For Anderson, 57, the chief in Omaha for 14 years — longer than anyone else — the moves began close to half a year ago when he announced he was retiring. The mayor asked him to stay; he stayed. Now he says he's going — for real.

Speculation abounds as to the reason Anderson is leaving. Some say health — he had a lung, reportedly malignant with cancer, removed last October. But Anderson has regained the weight he lost before his ordeal and will not discuss his health in detail except to say that it is good.

The rumor mill also has Anderson in line to be U.S. marshal in Omaha. Others say he might become the chief deputy sheriff in Douglas County. Anderson neither confirms nor denies any of the talk.

He has a reputation as an innovator, being the first to institute the 911 emergency system in the area, rewriting the department's standard operating

a defendant who has been fairly tried by a jury of peers. To alleviate this perceived problem, Justice Rehnquist advocated reviewing substantially all of the certiorari requests for persons under sentence of death in order to allow the states to carry out the ultimate punishment and put an end to "protracted" litigation.

Expectedly, Justice Stevens, writing in a separate concurring opinion to the denial of the certiorari request, attacked the folly of his colleague's proposal. Noting that "over 90 certiorari petitions have been filed in capital cases" during just the last 10 months, Justice Stevens maintained that to "review even a substantial percentage of these cases on the merits... would consume over half of this Court's docket." While neither Justice specifically attacked trial judges for contributing to the lengthy post-conviction litigation in capital offense cases, Justice Stevens was much more frank in noting that trial court judges must be responsible for handling the bulk of post-conviction remedy appeals.

This position of supporting the work product of trial-level judges, especially those handling criminal dockets, is one of the emerging themes of the Burger Court. This position became readily apparent earlier this year in the case which is reviewed below.

### Role of Judge In Jury Selection

By a vote of 6-to-3, the Supreme Court announced that a Federal trial court judge had not committed a reversible error during the selection of a jury when he rejected the defense counsel's request to make a further inquiry into the possibility of racial or ethnic prejudice against the defendant.

The present case arose on the night of December 10, 1978, when three aliens were led across the Mexican-American border to a waiting parked car. There they were met by a man of Mexican descent who drove the illegal aliens a short

distance to the town of Imperial Beach, California. They arrived early in the morning at the house where the driver had been living for the past six months with a Caucasian 19-year-old and her mother.

Later that morning, the driver hid the three aliens and their guide in the trunk of a green Oldsmobile. The mother of the driver's girlfriend drove the Oldsmobile north through a San Clemente checkpoint while the Mexican driver followed in a grey Ford. After passing through the checkpoint, the driver and the mother exchanged cars, with the mother returning home while the driver continued north to Los Angeles.

Unknown to the driver, his destination in Los Angeles had been under surveillance for several weeks by agents of the Immigration and Naturalization Service, since it was a suspected drop site for the illegal aliens. When the Oldsmobile reached its destination the aliens were let out of the trunk and told to go into an apartment. Within minutes the driver, the aliens, and other principals in the smuggling operation were arrested.

At the trial of the Mexican driver, the mother and the three illegal aliens, the INS agents and another smuggler arrested at the time of the raid testified for the government. The defendant did not testify and his unsuccessful defense was primarily geared to attacking the credibility of the government's wit-

nesses. The jury found the driver-defendant guilty of "one count of conspiracy to conceal, harbor and shield, and illegally transport aliens, in violation of 18 U.S.C. §371 and 8 U.S.C. §1324; three counts of aiding and abetting the illegal transportation of aliens, in violation of 8 U.S.C. §1324(a)(2) and 18 U.S.C. §2; and three counts of concealing, harboring and shielding aliens, in violation of 8 U.S.C. §1324(a)(3)." The Court of Appeals for the Ninth Circuit affirmed on all counts.

Prior to the trial, defense counsel had made a request to be allowed personally to conduct a preliminary examination of the prospective members of the jury. Aware that the request was a radical departure from the practice of the Southern District of California of having the judge conduct the examination of the prospective jurors, the defense counsel submitted a list of 26 questions that he wished the trial judge to ask. Among the questions submitted was: "Would you consider the race or Mexican descent of Humberto Rosales-Lopez in your evaluation of this case? How would it affect you?"

Pursuant to Rule 24 of the Federal Rules of Criminal Procedure, the trial judge conducted the preliminary examination of the prospective members of the jury himself. He utilized approximately half of the submitted questions, but not the one set forth above. Among

Continued on Page 13

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*Fitting the punishment to the crime:*

# Swinging the pendulum back to 'flat-time'

By SLOAN T. LETMAN  
and HERBERT SCOTT Jr.

In 1764 Cesare Beccaria, in *On Crimes and Punishments*, created a system of inevitable punishments which punished equally all people who committed the

## THE CJ MONITOR

This is the second in a series of articles that will appear from time to time.

same crime, and made that punishment supposedly proportional to the crime. His main justifications were equity in sentencing, retribution and deterrence, and in theory his system should have achieved these ends. Since everyone convicted of the same crime received the same sentence, this seemed equitable by definition. The stipulation that the punishment be proportional to the crime made the retribution just.

The theory appeared fair and consistent. Soon, however, flaws developed in this approach, most concerning its practice and not the theory. A leading criticism was that treating equally all persons who committed the same crime actually detracted from Beccaria's goal of equity, for it did not take into account circumstances which may have either aggravated or mitigated the crime itself.

The discontent with this system grew and festered in the United States, peaking in the 1870's. It was at this point that the National Correctional Council decided to abandon Beccaria's system of determinate sentencing, contending that equity was better served by focusing more on the criminal than the crime. People who committed similar crimes under similar circumstances should be treated equally, it was argued, not those who committed the same crime under substantially different circumstances. This idea was met with enthusiastic acceptance, and soon compiled a widespread but strong foundation of support among the academicians who shaped correctional policies in that period. By 1922, 37 states had enacted some form of indeterminate sentencing, and all states ultimately adopted some variation of this structure.

There was a myriad of justifications for indeterminate sentences, all of which were not necessarily the product of consensus. The unifying justification, however, was the philosophy that, since the offender's release should be dependent on his "rehabilitation," he should be released only when he had, in fact, been rehabilitated. Rehabilitation rates would be impossible to assess at the time of sentencing, since they would vary for each offender, and because judges were not regarded as eminently qualified to make accurate assessments. Thus, the judge was to set the wide sentence range mentioned earlier, leaving it to officials who were supposedly more knowledgeable about human behavior — and less subject to public pressure than judges eligible for re-election — to decide the prisoner's actual length of stay, which would correlate directly with his readiness to assume a law-abiding role in society.

### An Alternative to the Current System

Today, a move toward more certainty in sentencing is quickly sweeping the country. Among the more prominent legal philosophers who stimulated this trend were Justice Marvin Frankel, in his influential 1973 book, *Criminal Sentencing*; Richard A. McGee, who has advocated, among other things, an end to indeterminate sentencing and a return to flat time sentencing; and Dr. David Fogel, the former executive director of the Illinois Law Enforcement Commission, who devised a system of sweeping reforms in which the entire criminal justice system would be revamped to produce greater equitability, characterized by a sense of humanitarianism consistent with the age in which we live. Fogel's system is referred to as the "justice model."

While the justice model contains several modifications of the current criminal justice code, not all of them relate directly to the issue of certainty in sentencing. Only those suggestions directly related will be discussed here.

A flat-time sentence is a determinate sentence, as opposed to the indeterminate sentence meted out in most jurisdictions. Instead of allowing 1-20 years for a given felony, it might specify a flat five years with a range of two years, plus or minus, for aggravating or mitigating circumstances. The assumption is that justice should be more even-handed, that discretion should be narrowed and that the criminal is largely victimless (at least our system of guilt attribution assumes this).

Research clearly indicates that today's indeterminate sentencing practices have:

- Produced enormous unjustifiable disparities in sentences, thereby creating a sense of injustice in the cellblocks;
- Lengthened actual time served (with a special surcharge for minorities, it appears);
- Given prosecutors more sentencing power than judges with the widespread use of plea bargaining;
- Transferred actual time-served decisions to a largely invisible group called the parole board.

The parole board's powers, in turn, lead conservative judges to try to second-guess liberal parole boards by raising minimum sentences, while more lenient judges may give only half the minimum to similar offenders because they believe the parole board to be too conservative. All of this describes a government of men rather than laws; it is bargain-basement justice.

Flat-time sentencing was resurrected in response to this degradation of justice, and today it assumes a position in the vanguard of correctional philosophy as a champion of equity and even-handed justice.

Fogel included in his justice model provisions for the adoption of the flat-time sentence as one method to instill a sense of equity in our malaise-ridden criminal justice system. He suggests that a prison sentence should be regarded simply as the deprivation of liberty for a fixed period of time. The sentence must be in-

### COMPARATIVE ILLUSTRATION OF SENTENCING STRUCTURES

Present Indeterminate Sentencing in Illinois  
(Judges choose min. and max. within these ranges\*)

Offense	Sentence
Murder	14 years to life
Felony — Class 1 (rape, armed robbery)	4 years to life
Felony — Class 2 (robbery, burglary)	1 to 20 years
Felony — Class 3 (theft of \$150)	1 to 10 years
Felony — Class 4 (petty theft)	1 to 3 years

\*There is also parole supervision for two to five years

### Example of Fixed Sentence System

Offense	Sentence	Range in Aggravation or Mitigation
Murder	Life or 25 years	up to 5 years
Felony — Class 1	8 years	up to 2 years
Felony — Class 2	5 years	up to 2 years
Felony — Class 3	3 years	up to 1 year
Felony — Class 4	2 years	up to 1 year

formed by law, not by whim and caprice. A sentencing law must contain procedural regularity, and statutory criteria for the imposition of a fixed sentence within that range. It must be reviewable through an appeals process with a view toward producing equalization.

He goes on to propose that the parole board be abolished as the release mechanism from prison, and he calls for the separation of "treatment criteria" (clinical progress in rehabilitative programs) as a relevant consideration in the procedure for establishing release dates. Within a narrow range of sentences, this system calls for "vested good time" on a day-to-day basis: for each lawful day spent inside, a day is deducted from the specific sentence imposed. Vested good

time means that for every 30 days an additional 30 day reduction "goes into the bank" and is inviolate. Prison disciplinary boards, under a due process procedure, can only take away up to 30 days prospectively. Violations resulting in a revocation of more than 30 days calls for an indictment and, upon conviction, a consecutive sentence. An intended result of this system is that both the keeper and the kept are given a stake in lawful behavior.

Fogel's Illinois proposal for flat-time sentences is in accord with what Prof Alan Dershowitz has called "presumptive sentences." The expected, or "fair" number of years that a legislature designates for a crime in the absence of a

*Continued on Page 10*

## Supreme Court shrinks shrinks' testimony in Miranda extension

*Continued from Page 1*

the defendant were allowed to live, he would commit future acts of violence.

There has been, in recent years, an intense debate over the use of psychiatrists in criminal justice and the reliability of their testimony as "expert witnesses" in predicting future behavior. The American Psychiatric Association has condemned the practice of using psychiatrists as predictors because of the inherent unreliability of such predictions of future danger.

Estimates vary, but legal officials have predicted that the Smith ruling could mean commuting the sentences of between 20 and 70 persons currently scheduled to die as a result of the testimony of psychiatrists on their "future dangerousness."

Joel Berger, the attorney for the NAACP Legal Defense Fund who represented Smith in the Supreme Court case, told the Los Angeles Times that the decision might void at least 30 death sentences in Texas, as well as sparing some persons sitting on death row in Virginia and Oklahoma.

The Court was unanimous in erasing Smith's death sentence, but it emphasized that Smith's murder conviction still stands. Texas prosecutors can once again try to convince a jury that Smith should be executed but under Texas law, the jury that decides capital punishment is

the same jury that decides conviction. Trying the case again, Berger told the Times, would mean running the risk of acquittal.

The NAACP Legal Defense Fund argued in its case before the court that the state's use of a psychiatrist's testimony breached the defendant's constitutional protection against self-incrimination and denied him the right to counsel.

Five of the justices agreed with Chief Justice Burger in calling for the new safeguards for defendants, while Justices Potter Stewart, Lewis F. Powell Jr. and William H. Rehnquist wrote in favor of a narrower ruling.

The court exempted from its decision psychiatric examinations relating to a defendant's insanity plea or the competence to stand trial. The court ruled that in cases where the defense raises the psychiatric issue the state is entitled to gather its own psychiatric evidence in the case.

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SLOAN T. LETMAN (far left) is an assistant professor of criminal justice at Loyola University in Chicago.

HERBERT SCOTT JR. (left) is an associate professor of corrections at Chicago State University.

# Rethinking crime control

## An interview with Dr. Gerhard Mueller, head of the United Nations Crime Prevention and Criminal Justice Branch

LEN: In our previous interview (LEN, 3/21/78), you indicated that there was "an eerie correlation between urbanization and all that goes with it, i.e. the breakdown of the extended family; the breakdown even of the small family; the loss of control of village and neighborhood communities, and an increase in crime." You suggested that other forms of social control, as distinguished from law enforcement control, could be substituted, as they have been in China and some of the other socialist countries. Are there any forms of surrogate social control that would be effective in advanced Western democracies?

MUELLER: One social control form which comes most to mind is the organized religion. We have noticed a return to religious fundamentalism in recent years, even taking the form of religious cultism, as a deliberate effort to find social control. Think of the unfortunate experience of Jonestown, which really was meant to be a form of social control in a Westernized, industrialized world. I would regard the revival, the return to religious precepts in this country as a seeking for a substitute form of social control, or a return to a form of social control which at one time was more important than it is now.

Undoubtedly, there are other forms of social control that can be turned to — schools, universities and colleges are a means of social control, although not very effective yet. But imagine what would happen if we did not have these millions of youngsters in college, if they were not controlled in the campuses and were out on the streets, perhaps unemployed. Just imagine that for a moment. So you must refer to colleges and schools as a means of social control. Some countries have employment, factory life, as a means of social control; in highly industrialized countries like Japan that is a means of control. So there are other forms outside the political realm.

LEN: Recently, the United States Chief Justice, Warren Burger, made a speech before the American Bar Association in which he intimated that America had become an "impotent society" in terms of controlling crime. In your view, has the U.S. failed in its efforts to control crime, and extending that, are we in worse shape in that respect than other urban democracies in the West?

MUELLER: That's a bit hard to say. First of all, let me express sympathy with the Chief Justice's comments. He struck a very familiar chord for many Americans. Americans are disheartened by the apparent lack of success; with all the effort, all the investment — several billion dollars from LEAA alone — they did want to see the results that were promised. Maybe people in criminal justice shouldn't have promised results that

swiftly.

It is for that reason that the Chief Justice, I think, was right, and I think he was also right in not sounding entirely pessimistic, but rather expressing a certain optimism that something can be done. That, to me, comes at a beautiful time, because we in criminal justice, especially Americans, are so defeatist and so negative as a consequence of this criticism. And because of our apparent lack of success, we have turned to nihilism, the return to the retributive theory of punishment — nothing else works, so why not simply lock 'em up for a prescribed length of time and then let them out. This is totally nihilistic, and in that sense Chief Justice Burger returned us to a more positive approach: do something. It must be possible to do something about crime; it must be possible to do something about offenders. Those who say we cannot correct, we cannot reform, we cannot prevent crime, ignore the great American experience in behavior-changing: advertising. Take advertising. We're spending billions of dollars a year on advertising and indeed, through advertising we change the behavior of human beings. Smoke this; don't smoke; do this; do that; this mouthwash, this candy — advertising works. Now if we can direct human behavior by means of advertising in the commercial field, why does it seem so out of place, why does it seem so impossible to try the same thing, namely changing attitudes and behavior, else-

tryed by a jury. The rest are plea-bargained. That's what the Chief Justice is complaining about. I think the shortcoming of the system lies precisely in the judiciary, and that, to him, of course, is the dearest part.

LEN: Generally, one sees the role of government as providing elementary security on the streets — and this is right out of the Chief Justice's remarks — and an environment in which all citizens can conduct their everyday activities without fear of unlawful interruption. Are governments in large urban democracies throughout the world providing this, and is total safety perhaps too much to expect in modern society?

MUELLER: Total safety is too much to expect, nor can we hope within the predictable future to achieve the ideal of, say, Tokyo, which has an unbelievably low crime rate. But our country does rank badly in the ranking of countries of the world. We are, together with, perhaps, Jamaica, just about tops in crime rate per 100,000 population. In homicides, some of the Latin American countries are worse off than we are, but in overall crime, especially burglaries and robberies, we are doing extremely badly, just about as badly as Jamaica has done under its previous administration. Obviously that situation must be improved, but it cannot be improved by law enforcement alone. The citizenry, as such, has to participate, and that is why I was so absolutely delighted when I saw the Guardian Angels in New York,

### 'Putting a sign on the door that says Rehabilitation Center in some maximum security prison is not a commitment to a rehabilitative approach.'

where? The whole American educational system is directed toward improving people and changing people. Why can't it be done in the area of offenders? I suggest we have never really tried it seriously. Putting a sign on the door that says "Rehabilitation Center" in some maximum security prison is not a commitment to a rehabilitative approach. This is where the Chief Justice, I think, is entirely right. He comes back to us and says "don't be nihilistic — do something."

LEN: What kind of implication does this have for law enforcement? The Chief Justice indicated that we have to spend more money on more cops, more judges and improving the criminal justice system, but what you're suggesting is that perhaps the criminal justice system is a lot wider than we have ever imagined it to be.

MUELLER: Yes, I see the criminal justice system as being extremely broad, encompassing education, social control, the labor market, and non-criminal justice means of controlling deviance. If there is any shortcoming in the Chief Justice's speech, it is perhaps his failure to refer to other means of social control, which sometimes are cheaper than the criminal justice system itself and very frequently are more effective. The Chief Justice may be right in the sense that we may have to spend somewhat more money in the criminal justice area. I don't know exactly whether that is so; I think we have been very wasteful, and probably the current Administration is going to look over our shoulders much more so than past Administrations have done, so that we spend our money wisely. I think we can rationalize a lot within the system, I think we can save a lot — all that is possible.

Overall, it is entirely conceivable that more money is needed. If I compare, for example, the rate of judges per 100,000 population in a European city with an American city, we're trying to do an impossible job with an extremely small number of people. Probably we need five to ten times as many judges as we have at the moment.

That costs money; judges are expensive. In fact, they're the most expensive part of the criminal justice system. But we cannot expect a handful of judges to be the kind of system of which Chief Justice Burger speaks, ideally. So in that sense I think we have to spend more; it's precisely the judiciary where we have not spent money in the past, and that's the bottleneck. If police become more efficient and more offenders are apprehended, but the courts cannot process them, the result is plea-bargaining. The result is that instead of trying 100,000 or 200,000 cases in Manhattan, we have 250 cases being

a citizen group. I do not see that as a vigilante group; I see that as citizen participation in crime control.

LEN: You would encourage that?

MUELLER: I would encourage that very much. Get people into the street. The more people you have in the street, the less crime you have. The United Nations has done a lot of work on the issue of popular participation in the prevention of crime, and I think it's a hallmark of countries with relatively low crime rates that you do have a large amount of popular participation in crime prevention.

LEN: How do you rationalize the response of the police and other organizations that are professionally involved in law enforcement to groups such as the Guardian Angels and others that want to participate in crime control, a response that has been very, very negative?

MUELLER: It was a typical and, perhaps from their perspective, a proper administrative and bureaucratic approach. Here was a spotlight on a situation where the Transit Police could cash in: "You people realize there are big problems in the subway, we are the people that take care of the subways, ergo, give us more money; we'll provide the protection, we're the professionals, we're trained." And so on. This is fine; they are the professionals and they should carry principal responsibility for that, but they should realize that their job is going to be a lot easier if they have popular participation in crime prevention and a sympathetic public.

LEN: There's an emerging social science, which probably is more popular in Europe than in America, called victimology. One of its premises is that, to some degree, people who are victims of crime in some way contribute to their own victimization. Is this a rationalization of the ineffectiveness of the criminal justice system, or is it, in effect, facing the realities that we discussed before, that total safety is an impossible dream in modern, urban society?

MUELLER: Well, you know it takes two to tango, and in the typical crime situation you have the perpetrator and a victim. There's a relationship between the two, and that relationship may range from a completely passive on the part of the victim to a very active role on the victim's part. One thing researchers in victimology have pointed to is a rather subtle relationship between the victim and the perpetrator. A person who goes into an illegal gambling casino, an after-hours club, for example, opens himself up to potential victimization. A person who hangs out in the worst possible neighborhoods at ungodly hours opens himself up to victimization. If in

Gerhard O.W. Mueller has directed the United Nations' Crime Prevention and Criminal Justice Branch since 1974, during which time he served as executive secretary for the UN's Fifth Congress on the Prevention of Crime and the Treatment of Offenders.

After pursuing a brief law enforcement career with the British Military Government Water Police from 1945 to 1947, Mueller emigrated to the United States where he taught law at a number of institutions, including the University of Chicago, New York University and the Yale University Law School.

The holder of J.D. and LL.M. degrees, Mueller has served as a consultant to a number of prestigious panels and associations, including the U.S. Senate Judiciary Committee, the Ford Foundation, the American Bar Association, and various international agencies. He has written or co-written 13 books related to criminal justice theory and procedure and has edited more than 60 texts and monographs in the field. The recipient of numerous honors and awards, Mueller has been mentioned in Who's Who in America and The International Who's Who of Intellectuals.

This interview was conducted for Law Enforcement News by Robert McCormack.

# Control in the West

## United Nations crime prevention division

1899 you had gotten drunk in the harbor bars of New York, you could only blame yourself if by the next morning you had been shanghaied into a windjammer and were on your way to sea.

So there is this relationship. I do not necessarily see a direct relationship between the high crime rate that we have in this country and a high rate of victimization, although there may well be one. I simply am not familiar with any studies that have measured this correlation on a large scale.

LEN: There is one study, though, that supports what you've just said, and that deals with the whole concept of lifestyles being a potential source of victimization. Specifically, it says that, depending upon how much time you spend in public places and how much time you spend away from your family, depending on whether you're single, depending on your age, you're more prone to victimization...

MUELLER: All the victimization studies do point to that. Probably Hans von Hentig was the first one, in his volume on the criminal and his victim; he cited as examples the watering holes of Florida and other spas. He made a good point of it. But the studies that exist so far are not yet quantified, and in that sense we cannot make any scientific deductions.

LEN: Getting back to Chief Justice Burger's remarks to the ABA, he indicated that we have established, "by virtue of the U.S. Constitution and the Bill of Rights, a system of criminal justice that provides more protections, more safeguards, more guarantees for those accused of crime than any other nation in history," and he went on to state that this has produced a "dangerous imbalance" and that "it has expanded steadily for nearly two centuries...at the expense of the great masses of ordinary people." Can American jurisprudence continue to provide the extent of due process that it now offers, and similarly, do you think the delays afforded by due process detract from the general prevention concept of criminal justice?

MUELLER: I trust you noted in the Chief Justice's speech that there was no call for a departure from the due process model that his predecessor has created—I'm talking about the Warren Court. I think the Chief Justice does not propose to terminate the due process model, at least there's nothing in his speech which would indicate that.

What we might have to do is to establish, or reestablish that balance which the Chief Justice wants. It means we have to strengthen law enforcement, we may have to strengthen the prosecution side. There was a time, you remember, 20 or 30 years ago, when the defense was so outgunned by the prosecution in a typical American criminal case that it wasn't funny. Today it's the other way around, largely as a result of decisions like *Gideon v. Wainwright*; American law schools have ground out thousands and thousands of extremely capable defense lawyers for the public defender's offices and legal aid societies. Today you will find in a typical situation that the prosecution is outgunned by the defense. That is the imbalance that has been created. Now I think it is entirely possible to reestablish that balance, and not at the expense of due process, but rather by strengthening the capacity of prosecution and law enforcement to handle criminal cases. Then I think you will have the ideal situation. At the moment, I agree with the Chief Justice that there is somewhat of an imbalance.

LEN: The Warren Court is often talked about as being the "due process" court, and the Burger Court is seen as a "crime control" type of court, and while that dichotomy might be said not to exist, really, nonetheless the Chief Justice does advocate, as in *Santobello v. New York*, that the plea bargaining process become a legitimate function of the courts, just as he advocated in his ABA speech that there should be fewer appeal opportunities for individuals. Doesn't this, in a sense, erode some of the legal groundwork laid by the Warren Court?

MUELLER: Not necessarily. If you look at the current appeal structure, there is virtually no counterpart anywhere in the world. From a conviction in state trial court you go to the state court of appeals, then to the state supreme court. The fourth step is you try to get a writ of certiorari from the Supreme Court of the United States,

which normally is denied. Then you go on habeas corpus to the Federal District Court; that is usually denied. You go to the Court of Appeals, a seventh appeal, which denies it also, then you have a second chance to get certiorari from the Supreme Court. So there are eight appeals. There is no system in the world that can afford to have eight appeals. I'm sure there is something that can be done constitutionally; I haven't given it great thought because I'm not working in American constitutional law at this moment, but I'm sure there is a way of cutting down from eight appeals to a somewhat lesser number. It's tremendously costly, and if it weren't for organizations like the American Civil Liberties Union or other civil rights organizations, people just couldn't afford to run through eight appellate levels.

LEN: Do you feel that the European system, where they have an interrogative-type of style, as opposed to the adversary format that we have in the U.S., might be a better approach?

MUELLER: The difference isn't all that great anymore. There has been an approach toward the middle from both ends. With the ever-expanding discovery rules that we have now in the American legal system, we are approaching the European model in that regard, but we still have a major difference in that there is a more active judge in the European system. It is the judge who has to establish the truth, the judge who questions the witness, and so on. On the other hand, European judges have their own personal and individual styles. Some are more authoritarian than others; some delegate more of their authority to the parties. So the difference isn't all that great anymore.

LEN: You mentioned earlier that the schools could be a significant factor in social control outside of the law enforcement process. Chief Justice Burger, meanwhile, found great fault with the educational system in America, both at the primary and post-secondary levels. Among other references in his ABA speech, he quoted Charles Malik, a former president of the U.N. General Assembly, who said:

"I search in vain for any reference to the fact that character, personal integrity, spiritual depth, the highest moral standards, the wonderful living values of the great tradition, have anything to do with the business of the university or with the world of learning."

Has it been your experience as an observer of the human situation that the schools in the U.S. have been that dismal a failure?



young human beings. That is the principal crime preventive task of the public schools.

LEN: And should that be done by the school system, or by the family? In other words, is the family failing in that area, leaving the schools to be a surrogate for that?

MUELLER: The Sixth United Nations Congress on Crime and the Treatment of Offenders, which discussed these aspects, came to the conclusion that especially if and when families fall apart, or families fail to impart ethical standards and moral values, then normally the only other organized system that you have in society is the school system. So the job does indeed fall on the schools, because there's nobody else, nothing else that can do it, unless you create—or recreate—those other social control systems about which we spoke at the beginning, namely organized religion, and so forth. But absent anything else, if the parents can't do the job, what else is there but the schools? We may have to capitalize on that.

LEN: In a reference to the connection between poverty and crime, the Chief Justice does say that if poverty were the principal cause of crime, crime would be almost nonexistent in affluent countries such as Sweden, and high in Spain and Portugal, and that is not the case. Thus, the Chief Justice attributes the crime rate, I imagine, not so much to the influence of poverty per se, but perhaps to poverty in the midst of so much affluence. Would that be an accurate assessment?

MUELLER: Many scholars have pointed that out and, of course, it's the official theory of some countries—socialist countries, for example—that one of the principal causes of crime is the differential distribution of

### 'The public education system is potentially one of the most effective long-range systems for...crime control, by inculcating the values of citizenship.'

MUELLER: We at the United Nations have run a number of interregional, ad hoc meetings of experts on the role of public education in crime prevention, and the one universal recognition that came out of these meetings was that the public education system is potentially one of the most effective long-range systems for crime prevention and crime control, by doing more than teaching the three R's, by inculcating values of citizenship, by forming the basis for the formation of moral values, ethical values and ideas. That, I dare say, is a universal recognition, because it's something on which scholars from the Soviet Union agreed with scholars from Saudi Arabia and scholars from the United States. The Chief Justice is probably right that the American system could do a lot more in this regard.

LEN: Are we producing functional illiterates, so to speak, who, after 10 or 12 years of education, cannot function in society on a normal plane and consequently may contribute to the crime problem, or is it something more?

MUELLER: I'd like to differentiate between the educational function in terms of imparting knowledge, on the one hand—I think there the schools are not doing very well, because we do have many high school graduates who are virtually illiterate. This is one function of the public school system. The other function, which to me is equally important, if not more so, is character formation, and the building of moral and ethical values in

wealth. I need not tell you that there are many other theories of crime causation; this is simply one of many. You cannot say that poverty as such breeds crime; you cannot say that wealth will result in the diminution of crime as such. It just doesn't work like that.

LEN: By way of wrapping up, could you offer a summary comment on the panorama of suggestions for improvement in the criminal justice system made by Chief Justice Burger? Can we do it with more police personnel? Can we do it with warehousing of offenders?

MUELLER: It's very dangerous to answer the Chief Justice's global statements with equally global statements. It would not be wise to do so—the experiences have been too variegated and too many. I must say it struck a sympathetic chord when the Chief Justice spoke about the failure of our bail system. I think there is something fundamentally wrong; whether a constitutional amendment is needed, I don't know. But many countries with a due process model—central Europe, for example—have lower pretrial detention rates than we do, yet have no guaranteed bail system. The emphasis in European countries is not on whether somebody will show up for trial—in fact, if someone doesn't show up for trial that may benefit the system; it's one less trial to be held. The emphasis there is on the danger, as exemplified by the act committed. These are things that the American system may have to think about, and that will take years.

*It can't happen where?*

# Foreign cities facing rising handgun violence

When the musician John Lennon was murdered and when President Reagan later became an assassination target, the grumbling from both Britain and Japan was audible: it can't happen here, the critics said.

But a recent Associated Press survey of crime rates in London, Rome, Paris and Tokyo showed that, while things are not as bad as in, for example, New York City, many foreign capitals are having to deal with the vexing problem of rising gun-related violence.

"More and more London police, who had a tradition of going on duty unarmed, now are being equipped with weapons," the wire service reports.

Scotland Yard figures show that subway crime has more than doubled since 1977. There were 13,984 robberies and

violent thefts reported in London last year, compared with 11,636 in 1979. The AP reported that "virtually every category of serious crime, including murder and subway violence, rose last year."

"Morality seems to have gone out the window. There is very little moral shame among those who are caught," Gilbert Kelland, an Assistant Police Commissioner in London was quoted as saying.

Among the cities compared, New York still leads its foreign counterparts in per capita slayings a year. The Big Apple has a murder rate of 20.1 homicides per 100,000 population. London has a rate of 4.2 per 100,000, Rome 1.1 and Tokyo a 2.0 rate.

Tokyo's murder total dropped last year from 195 to 180. Authorities believe one reason for the decline is a strictly enforced ban on handguns. Guns were used in 44 of the 1,853 murders in Japan in 1979.

London also has a no-gun tradition but authorities there fear it is being eroded by criminals who are, in increasing

numbers, using guns in holdups. Police are also undergoing a transformation, receiving gun training for the first time in many of their careers. More than one in 10 of London's 23,000-member force now has been trained to use a firearm.

Paris and Rome also reported increases in crime during the past year. The French capital had 161 murders, nine more than the previous year. Rome had 32 homicides last year, an increase of one over their figure for the year before.

While some point out that it is more likely that a person will be gunned down in New York by an unknown assailant than in other world population centers, cities like Paris and London have become, in recent times, the site of battles between rival terrorist groups.

London has been the battleground for a number of organizations emanating from the Middle East. Last July a former premier of Syria, Salaheddin al-Bitar, was gunned down by an unknown assassin equipped with a silencer-tipped automatic.

Statistics on crime in Paris are

unavailable but the national crime rate rose in 1979, the last year for which statistics were available. The increase was 8.5 percent over the previous figure.

Londoners are especially wary about increases in subway crime. "We've had managing directors of some of our largest industries, professional people and academics at it too. Every time there's a fare increase assaults go up on the Underground," David Farrugia, secretary of a London Transport committee monitoring subway assaults, told the Associated Press.

Assaults rose to nearly 600 last year, more than double the 1977 rate. By comparison, the New York City Transit Authority reported 13,675 subway crimes last year, 2,000 more than in 1979. Twenty murders occurred underground in New York in 1980, four more than in the previous year.

New York has 2,200 transit officers patrolling a 230-mile system with 460 stations. In London, 198 officers cover 260 miles of subway track and 279 stations.

## Las Vegas looks for 'fair shake' in cost of city/county force

Continued from Page 3

new bill that the city and county had "called a truce in their longstanding feud."

Hudgins said she believed the city was finally getting a fair shake in the new bill. "Of course the county wouldn't agree with this, but it's only fair. In our view anyway, we paid a disproportionate amount ever since this thing started.... The growth is all in the county and the Strip is all in the county, so the Metro spends more time in the county."

Continued from Page 7

Judicial funding concerning aggravating or mitigating circumstances. However, his proposal makes presentence investigation mandatory and non-waivable and also requires a statement on the record referring the judge to

statutory criteria for imposition of a sentence. It also permits judges to use noncustodial sentences in all appropriate cases, as is currently the practice in Illinois.

### Flat Time's Basic Provisions

- Replace the current waivable, voluntary presentence investigation with a non-waivable and mandatory one. This provision was created to limit the discretionary abuses (specifically plea-bargaining) by states attorneys by making their actions more visible, and consequently more reviewable.

- Change the current broad legislative minimums and maximums to a more narrow range. This narrowing of legislative limits is designed to decrease the number of instances of vastly disparate sentences for the same crime under basically similar circumstances. While this might substantially curtail discretionary abuses, it still allows some judicial discretion with its aggravating and mitigating ranges, so that the judge can fairly treat individual cases.

- Require the judge to select the "presumptive sentence," unless there are aggravating or mitigating circumstances. If these exist, the judge must state them and sentence accordingly. This provision was, again, designed to narrow judicial discretion and make decisions more accountable by requiring the judge to tender written reasons in cases where the disposition of sentence deviates from the legislative norm.

- Eliminate parole. Instead of having prisoners judged by parole board members who make the prisoner's release contingent upon his rehabilitation, the length of sentence served can only be affected by the prisoner's institutional behavior and good-time deductions. Fogel suggests a "day for day" good-time schedule where for every day a prisoner serves without breaking a rule he will get a day off his sentence.

This is designed to lessen discretionary abuses by the parole board and provide for more prisoner certainty concerning release dates. In addition, it makes the release date dependent on acting lawfully, not on acting "rehabilitated."

- Make rehabilitation programs available in the prison, but not man-

datory. These programs are not mandatory because coerced rehabilitation has proved ineffective. Confining the programs to those really interested inmates will save professional time and money.

If correctional policy is ever to realize its stated goal of convict rehabilitation, it must regard the convict as volitional. Before a man can successfully revise his character, lifestyle and behavioral tendencies, he must desire that such a transition occur. Our current system of rewarding inmates for participation in rehabilitative programs negates the value of such programs. If a man sincerely wants to change his ways, he will avail himself of such treatment regardless of its extrinsic rewards.

In the final analysis, flat time's strong points outweigh its weak points. The most glaring problem with Fogel's flat-time proposal is his requirement of mandatory presentence investigative reports, a requirement that will wreak havoc with court dockets and probation services. However, the scope of the problems such a requirement would create are far overshadowed by the value the report would bring to the sentencing hearing.

One may surmise that all of the problems related to sentencing practices and dispositions stem from the fact that the advent of the behavioralist school of psychology diverted our attention from the main duty judicial officers are supposed to perform in the disposition of sentence: they are supposed to punish, in the name of society, all those who have been found guilty of violating our moral codes and laws. Never was the legal system, nor any of its appendages, empowered to change men; it was the embrace of psychology by the criminal justice system which has maligned the system. Gods we are not, therefore, God we should not play. As men, we can only be successful in punishing wrongdoers, and that should be the primary purpose and goal of corrections. While we should encourage felons to reassess their values and lifestyles, it is neither in our power nor our jurisdiction to attempt to effect such changes. Prisons are for punishment, and the punishment is a lawful deprivation of a man's liberty.

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We read and review:

## Family abuse study is quantum leap forward

Responding to Spouse Abuse and Wife Beating: A Guide for Police. By Nancy Loving. Washington D.C.: 1980. 190 pp., paperback, \$6.00.

The appropriate amount of involvement by the state in the internal behavior of the family is a fundamental problem in a democracy. Until very recently, the values of the public called for a minimal amount of state intervention (represented by the police) in family behavior. Then in the 1960's a public awareness began to grow in the United States of the need for police intervention when crimes are committed between family members. The cloak of privacy and secrecy covering family crimes began to lift in the 1960's as a consequence of public exposure to physical child abuse. In the 1970's several other crimes between family members were brought into public view, among them spouse abuse.

Led by women's advocates, public at-

tention was focused on the response of the criminal justice system to battered women. Two important changes occurred in the police response to domestic conflicts in the 1970's. Law enforcement began to recognize spouse abuse and domestic conflict as a legitimate area for police intervention, and the police began to utilize new crisis intervention techniques for managing the behavior of persons in domestic conflicts.

The Police Executive Research Forum study by Nancy Loving, *Responding to Spouse Abuse*, represents the next quantum step in police intervention in cases of domestic violence. The study is critical of what it describes as police attempts to use the crisis intervention techniques of mediation and negotiation as blanket intervention tools for all cases of domestic conflict, whether involving just verbal disputes or outright physical violence. Ms. Loving's report makes a major con-

tribution when it identifies three types of domestic violence (major assaults, misdemeanor assaults and threats of violence) and suggests different law enforcement intervention strategies for each type of occurrence.

The study generally call for more frequent use of arrest in major assault cases, specifically where there is intentional use of force resulting in serious physical injury, use of a deadly weapon, or violation of a restraining order. Arrest is also recommended when minor injuries are inflicted following repeated threats of violence. For the second type of domestic violence, misdemeanor assaults, police are encouraged to arrest, summons, and/or make use of civil remedies, citizen's arrest or social service referral. For the third type of domestic violence, threats of assault, the report calls for separating the parties for several days, issuing citations, and/or using crisis intervention techniques or referral.

It is suggested that this new police response to domestic violence is needed because of several factors. First, many states have recently passed legislation giving the law enforcement officer more power in cases of domestic violence, such as making a violation of a restraining order a criminal offense, and not requiring the

officer personally to have viewed a misdemeanor domestic assault to make an arrest. A second factor urging stronger police action in cases of domestic violence has been the class action suits brought by battered women against major cities' police departments, as in Oakland and New York. These suits, which accused the police of failing to protect battered wives and take appropriate police action with the complaints of the battered women, have resulted in dramatically modified police policies and procedures for dealing with domestic violence in these cities. Other factors contributing to the need for a new police response to spouse abuse include the availability of a variety of services for the victim (e.g. shelter houses, women's advocates) and the abuser (e.g. treatment programs), and increased community support for stronger police intervention in cases of domestic violence.

The Loving study is both scholarly and pragmatic. It will be of interest to a general criminal justice audience, but it should be required reading for law enforcement administrators, policymakers and trainers. It consists of three principal parts. One is a literature review on problems related to family violence and

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## 'Mafia in the Marketplace' shows business booming for mobsters

Vicious Circles: The Mafia in the Marketplace. By Jonathan Kwitny. New York: W.W. Norton & Company, 1979 (hbk). 422 pp.

Jonathan Kwitny is an investigative reporter for *The Wall Street Journal*. His book *Vicious Circles: The Mafia in The Marketplace* reflects some of the finest research on the network of the American Mafia that this writer has ever encountered. The reader is treated to a view of the Mafia in corporate America that rarely gets into print.

The processed meat industry and Local 174 of the Amalgamated Meat Cutters and Butchers Workmen of North America are exposed by Kwitny for collusive corrupt practices. An old line German family enterprise, the Merkel Meat Company, is sold to a Texas conglomerate, Williams-McWilliams, which, after less than a year, sells it to Nat Lekietz, a meat dealer of dubious distinction in New York City. He and others scheme, plot, and bribe to sell horsemeat,

diseased meat and zoo meat for human consumption. We eat. They profit and are captured, indicted, arrested and receive severe sentences ranging from probation to six months in jail. The meat firms that cooperated with the Federal prosecutor, Nicholas Scoppetta, are granted immunity for selling the consumer thousands of pounds of diseased meat.

"The Great Mafia Cheese Caper" employs the economic theory called Drew's Law, which reads "if you don't pay your overhead, your gross is net." This theory is applied by members of the Bonanno family in their mozzarella cheese empire. The American Mafia's interpretation of Drew's Law: Buy the milk and cream on credit, make the cheese, sell the cheese, don't pay for the milk and cheese, make a total profit.

The reader tours the lunch wagon industry of Long Island and New Jersey, which was controlled by Philip "Rusty" Rastelli, a soldier in the Bonanno family.

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## Taking a trip through the system, with murder case as a road map

Deathroads. By Orvel Trainer, Robert N. Miller and Joseph A. Fanciulli. Boulder, Colorado: Pruett Press, 1979.

Normally the citizen is kept in the dark as to how the American criminal justice system actually operates. *Deathroads* attempts to rectify this, allowing the reader to comprehend and understand the intricacies of the criminal justice system and see how and why important decisions are made by the system's different components.

The reader of *Deathroads* is taken across the western United States along with the perpetrators of several vicious and particularly heinous murders involving young women who worked alone in doughnut shops. The authors have successfully given the reader a look at how and, to some degree, why sociopaths commit the violent acts known to their

type of personality. By utilizing the case method, the authors have brought a sense of realism seldom seen in other works.

Aside from the criminological view of the offenders and their victims, this book also demonstrates to the reader all of the steps involved in bringing the offenders through the criminal justice process. The authors have skillfully woven the facts of the Leeora Looney murder case into a scheme which is not only educational but also engrossing. To give the reader the opportunity to see how and why police operate the way they do, the authors have used an objective technique of analyzing the methods used by the police in this case and in doing so have shown both positive and negative aspects of several different police

Continued on Page 12

## EUROPEAN POLICING

The  
Law Enforcement News  
Interviews

edited, with an introduction by  
**Michael Balton**

with a Preface by  
**P.J. Stead**

EUROPEAN  
POLICING

The  
Law Enforcement News  
Interviews

In this book, ten European law enforcement executives discuss the organization and function of police in France, West Germany, Italy, Denmark, Ireland, and Great Britain. Conducted by Michael Balton and his colleagues on Law Enforcement News, the conversations reveal how European police are recruited and trained, how they interact with courts and penal institutions, and what contemporary problems concern police administrators most. Because most of the executives had visited the United States, their comments on American problems like corruption, capital punishment, crime rates, and juvenile delinquency are often thought provoking and controversial.

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**Responding to family violence:**

## Study untangles complexity of wife-beating calls

Continued from Page 11

events in the development of the current police response to family violence. This review functions as a problem statement and a state-of-the-art assessment. The review is thorough and generally very well edited, utilizing many reports in limited distribution.

A second major focus is on the original field research of the project, which was designed to assess existing police attitudes toward problems with and policies and procedures related to incidents of domestic violence. The methodology included visits to 17 police departments across the country, interviews with 50 police administrators and a questionnaire survey of 130 law enforcement officers in those 17 agencies. The limitations of the

sampling method and the sample size of the research are noted, but the data do suggest some answers to important questions, e.g. what factors influence police not to arrest in cases of domestic violence?

The third area, and the major focus of the report concerns the need and procedure for developing a police policy on intervening in domestic violence. Issues which should be dealt with in such a policy are described, a model policy is offered, and step-by-step instructions for developing an intervention policy are detailed, from need assessment to two-year follow-up evaluation. The report also underscores the need for implementing the policy through patrol officer training in methods of dealing with domestic vio-

**...The data suggest answers to important questions, e.g. what factors influence police not to arrest in cases of domestic violence?**

lence. The study suggests the content of such training and offers an excellent skill-oriented chapter which recommends procedures for patrol officers' handling calls of domestic violence.

The Loving report is a very well balanced document. It studies one specific type of crime, spouse abuse, and avoids the temptation to divert its focus to other forms of crime between family members, such as incest and physical child abuse. The study will appeal to the criminal justice scholar with its extensive footnotes at the end of chapters and its original data collection. It will also be a useful reference to the law enforcement practitioner, for nearly one-third of its 190 pages are appendices which contain sample policies, a needs assessment questionnaire, training resources, and more. The report is objective and candid in acknowledging the weaknesses of its study design. It is also both professional and objective in its written style. Although advocating a policy which is certain to be supported by feminists, the report studiously avoids the use of sex-biased pronouns and judgmental rhe-

toric. Instead, it utilizes a written style which mirrors the thoughtful, objective and thorough research of the project.

The solid research background of the report is synergistically combined with a step-by-step approach to developing a police policy for the local agency. What clearly would be of use in this important area of law enforcement are research data which support the effectiveness of the policies recommended by the Loving report. Only with the support of research data from high-quality field experiments (such as the domestic assault study now being implemented by the Police Foundation in Minneapolis) can the policy model suggested in this report be implemented with the knowledge that it is an improvement over existing police practices in dealing with spouse abuse and wife beating. The Loving report is a landmark work in its area, and will doubtless stimulate significant research, training materials and policy formation.

—F. Barry Schreiber

Center for Studies in Criminal Justice  
St. Cloud State University  
St. Cloud, Minnesota

## 'Investigator's investigator' looks at the Mafia's big-business ties

Continued from Page 11

From lunch wagon trucks to the Teamsters Union is a short haul.

Jimmy Hoffa, the Teamsters Union president from 1957 to his death in 1975, received in-depth attention from Kwitny. He tells us of "the theft of hundreds of millions of dollars from the Union's biggest pension funds" by the Mafia, and their collusion with union officials. Jonathan Kwitny shows his reader Mafia affiliations with banks, the stock market, the docks, the clothing and garment industry, the beer and liquor industry, and the bribing of anyone, anywhere. His tales are true and spellbinding.

A personal favorite chapter focuses on the author's disagreement with Professor Dwight C. Smith Jr. of the State

University of New York at Albany. Smith writes often on what he calls the "Mafia Myth," and Kwitny takes him to task and writes a lesson-plan that Smith should take seriously, telling us that Smith "commits an act of self-deception."

Jonathan Kwitny has written a superb book on organized crime and the American Mafia. His investigative reporting techniques should be taught to investigators at the Federal, state, city and county levels. Kwitny is an investigator's investigator, which is the highest compliment that this reviewer, as a former detective squad commander, can offer.

—Hugh J.B. Cassidy  
Adelphi University, Garden City, N.Y.

New from the John Jay Press!

## BRUTAL JUSTICE

*The Ordeal  
of an American City*

by Henry Cohen  
Loyola University of Chicago

This book is a fascinating historical account of modern lawlessness among urban institutions and agencies in California during the 1960's

"Unfortunately, BRUTAL JUSTICE will not be creditable to the American public and that is sad, because it is the story of too many American cities. It is indeed reality, and until American citizens understand this, we will continue to have deterioration of the quality of life in this country. This book should be read and believed by every American citizen, both conservatives and liberals. BRUTAL JUSTICE is a story of many victims, including the large majority of hard-working police who truly serve America."

The late Victor L. Cizanekas, former Chief of Police, Stamford, Connecticut

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## 'Deathroads' offers argument for importance of death penalty

Continued from Page 11

agencies, as well as their professionalism or lack of it.

The reader is shown how prosecutors devise strategies for serious cases, and many of the more subtle reasons for making various decisions in major cases are brought to light. Also, one can easily see how the "system" is not truly a system, with components that often seem to be at odds with one another instead of working together to see that justice is done and that the guilty are punished.

If ever there was a book which points up the importance of and need for the death penalty, this is certainly it. Although this was not the prime purpose of the authors, one can easily see how the families and friends of the victims of these crimes must have felt at seeing the convicted offender receive a sentence less than death. After riding in the back seat of the car, so to speak, with the offenders, one does not need much of an imagination to realize what these young women went through on their way to being killed; if any offenders ever deserved the death penalty the McCrary clan certainly did.

This work can be used effectively in college classes as a supplementary text in introductory level courses. It allows the

student to actually see how and why decisions are made at the various steps in the criminal justice process. Also, it could be used in crime investigation training classes.

Above all, this work should be made must reading for all Americans. If the public were to become aware of how the criminal justice process actually operates they could be more supportive and make for a more effective, efficient system of bringing justice to all involved, not just to the offender but also to the victim, their families and to society as a whole.

Seldom does a book explode on the scene as *Deathroads* has. It is a work which is written for use at various levels, from the average citizen to professionals in the criminal justice system. Simply put, this work ties all of the loose ends of the criminal justice system together and in doing so provides the reader with an insight into the sociopathic element which exists in our society. Perhaps above all the death penalty cries out for implementation from the pages of this very important work. The word should be spread on how important this work really is.

—Walter M. Francis  
Linn-Benton Community College  
Albany, Oregon

## Read a good book lately?

Why not tell us about it? Law Enforcement News publishes reader-contributed reviews of current books in the criminal justice field. Manuscripts should be double-spaced, typewritten, between 500 and 750 words. Send contributions to the editor in care of Law Enforcement News, 444 West 56th Street, New York, N.Y. 10019.

## Supreme Court Briefs . . .

Continued from Page 5

the questions asked by the judge was: "Do any of you have any particular feelings one way or the other about aliens or could you sit as a fair and impartial juror if you are called upon to do so?"

At the end of the judge's examination, the defense counsel again restated his request to have six of the questions dealing with racial or ethnic prejudice put to the jury prospects. At a conference at the bench out of the hearing of the prospective jurors, defense counsel argued that under *Aldridge v. United States*, 283 U.S. 308 (1931), the court "must explore all racial antagonism against my client because he happens to be of Mexican descent." The trial judge refused to ask any more questions. Shortly thereafter the jury was sworn that later convicted the defendant.

An appeal was taken to the Court of Appeals for the Ninth Circuit on the question of the trial judge's refusal to further question the prospective jurors with respect to racial or ethnic bias. In denying the appeal, the appellate court set forth the Federal rule "...that questions regarding possible racial prejudice should be put to the venire [list of jurors summoned to serve] in prosecutions of minority defendants, at least where 'special circumstances' indicate that the defendant's race may be a factor in the trial."

In upholding the conviction and the decision of the lower Federal courts, the Supreme Court noted that there were "no 'special circumstances' of constitutional dimension in this case."

Speaking for Justices Stewart, Black-

mun and Powell, Justice White announced in the judgment of the Court that appellate justices cannot "easily second-guess the conclusions" of the trial judge. Those members of the Court reasoned that since the "obligation to impanel an impartial jury lies in the first instance with the trial judge, and because he must rely largely on his immediate perceptions, Federal judges have been accorded ample discretion in determining how best to conduct" the preliminary examination.

Concurring in the result were Justice Rehnquist and the Chief Justice, who asserted that in a situation like the present case, "the asking of such questions, or the devotion of a substantial amount of time to the inquiry, could well exacerbate whatever prejudice might exist without substantially aiding in exposing it."

In dissent, Justices Stevens, Brennan and Marshall noted that in "this case, because the general questions asked by the learned trial judge were inadequate," they could not join in affirming the conviction. Turning to the "special circumstances" test for determining whether questions to expose prejudice are to be utilized, the Justices urged that even "when there are no 'special circumstances' connected with an alleged criminal transaction indicating an unusual risk or racial or other group bias, a member of the Nazi Party should not be allowed to sit in judgment on a Jewish defendant." (*Rosales-Lopez v. United States*, No. 79-6824, decision announced April 21, 1981.)

## DEA's dilemma resurfaces: getting help or getting the hook

Continued from Page 1

Carter Administration's track record in drug enforcement.

"This is not to say that the agents of the Drug Enforcement Administration have not performed remarkably well under difficult circumstances," Smith said. "During the last four years, however, drug enforcement simply was not a priority of the previous administration."

This would not be the first time an administration has sent out signals indicating it is strongly considering the possibility of eliminating the drug enforcement agency as an entity. The Carter Administration also hinted early in its tenure that the DEA might be up for grabs.

But, as the *New York Times* reported in 1977, critical opposition to then-Attorney General Griffin Bell's plan for a reorganization came from all sides — police chiefs, members of Congress, diplomats and scholars.

Bell said he was considering merging the agency with the FBI, but later backed away from his original proposal, saying he wanted a feasibility study done on the possibilities of a merger.

The *Times* quoted then-Police Chief



Former LAPD chief Edward Davis

Edward M. Davis of Los Angeles, in a letter written to the White House in which Davis said, "The idea of sublimation of DEA under the FBI could only be conceived by a naive and irresponsible mind."



## BURDEN'S BEAT

By ORDWAY P. BURDEN

### Crime statistics: all there in black and white, shrouded in shades of gray

We are all slaves to numbers. Data collection, polling and sampling, and compilation of statistics are a national mania in business, politics, education and the communications industry. And in law enforcement, as in just about every other facet of American society, we look to the numbers for answers.

A long time ago, Mark Twain cautioned, "There are three kinds of lies: lies, damned lies, and statistics." Maybe the old cynic Twain was putting the case against relying on statistics too strongly, but we are well-advised to tiptoe when we seek to draw firm conclusions based solely on statistical data.

Take the case of crime statistics. For a good many years it has been the received wisdom, both in law enforcement and among laymen, that the nation's crime rate has been rising dramatically. That judgment has been based on the FBI's annual Uniform Crime Reports, which have been our prime measure of crime since the UCR was started in 1930 by the International Association of Chiefs of Police.

The crime story is — or seems to be — right there in black and white. The numbers for all eight offenses covered by the UCR have grown steadily. Last year, for example, the UCR data showed that, overall, serious crime was up 10 percent and violent crime up 13 percent over 1979. Figures don't lie, right? The crime rate is still soaring? Maybe so.

But another measure of the nation's crime trends found that the rate of violent crime may have decreased slightly in 1980. The latter measure is called the National Crime Survey, and it reported that violent crime was down about one-half percent in 1980. How can we account for the substantial difference between the UCR and NCS results?

We can't, except to say that they are reporting different aspects of the crime picture. As every police administrator knows, the FBI's Uniform Crime Reports are a tabulation of crimes known to police. The National Crime Survey, which was started in 1973 by the Bureau of Justice Statistics, is a compilation of the results of semi-annual interviews with nearly 132,000 persons in 60,000 households throughout the United States. Essentially, it is a sampling of the victims of crime.

For 1980 the survey found that 30 percent of all American households were "touched by crime" — which might mean anything from a rape or aggravated assault to the theft of a bicycle from the front porch. The NCS's data on households touched by crime in recent years shows a slight decrease since 1975. That year the survey found 32 percent of all households "touched by crime." In 1976, it was 31.5 percent, and for 1977 through 1979, 31.3 percent.

The National Crime Survey does not include data on murders or arson, and there are a few significant differences with the Uniform Crime Reports on how some other crimes are tabulated. The survey, for example, does not include robberies of banks and stores in its robbery category because they don't involve households. But these differences in reporting cannot alone account for the wide gap between UCR and NCS results.

What can account for it? Two factors are probably most important. One is that the Uniform Crime Reports have become more complete and accurate than they used to be. Today 98 percent of our population is covered by the UCR data. As reporting has improved, the total number of crimes listed, naturally, has risen, thus bringing an apparent rise in the crime rate. The second factor is that the public's perception that crime is rising has led more citizens to report crimes to the police. As every law enforcement administrator knows, many crimes are never reported for a variety of reasons. Some people figure that the criminal will never be caught, so why bother. Others may fear retaliation if they go to the police. For some minor crimes, the victim is so little affected by the event that Crime Survey interviewers find they have to jog the victim's memory to get the details a few months later.

For policy-makers in the criminal justice system, both the UCR and the National Crime Survey data are useful. One measures crime from the police viewpoint, the other from the victim's viewpoint. Having the two systems is not redundant, in the view of Dr. Harry A. Scarr, the former director of the Bureau of Justice Statistics. "They supplement and complement one another in ways that enhance our understanding of crime," he said.

The UCR is the only record we have that shows crime trends in specific regions and communities, Dr. Scarr noted. But he also pointed out that the National Crime Survey "shows us that there are large amounts of crime occurring that are never reported to the police" — it was anywhere from 25 to 88 percent in 1978, depending on the nature of the crime.

"The survey allows us to begin to understand the kinds of crime that do not come to the attention of the police, the so-called 'dark figure' of crime," Scarr observed.

No matter how we measure it, there is a lot of crime in the United States. But we would do well to be cautious about using either the Uniform Crime Reports or the National Crime Survey to announce crime trends. Both are useful tools, but neither alone can give the whole picture.

(Ordway P. Burden welcomes correspondence to his office at 651 Colonial Blvd., Westwood P.O., Washington Twp., NJ 07675.)

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# JOBS

**Project Director.** Dade County (Miami), Florida, has an immediate opening for a grant-funded administrator to direct a newly created police and corrections assessment center involving a cooperative selection/promotion effort under the Institute of Criminal Justice at Miami-Dade Community College.

The position involves working with contractors to develop appropriate exercises; assisting with designing and conducting assessor training; selecting candidates for processing as center becomes operational, and determining proper evaluation and follow-up activities. The position demands considerable initiative and leadership; desired qualifications include graduate degree, knowledge of police job tasks and experience with personnel assessment.

The starting date is August 1, 1981, with resumes and letter stating professional background and experience submitted no later than June 20, 1981. Salary is competitive.

Send personal information to: Marie Hydress, Miami-Dade Community College, Personnel Department, 11011 S.W. 104th Street, Miami, Florida 33176.

**Police Officers.** The city of Houston, Texas, is currently accepting applications for the position of police officer. Candidates must be between 19 and 36 years of age and reside in the United States. A valid Texas driver's license will be required prior to appointment. The applicant must also pass a series of interviews, investigations and training at the police academy.

Monthly pay for cadets starts at \$1489, with yearly increases up to \$1938 per month. Promotions are based on civil service exam. Benefits include incentive pay,

vacation and holidays, continuing education compensation, free hospitalization insurance, sick leave and civil service job security.

Applicants should call: in Houston, 222-5201; in Texas (toll free) 1-800-392-2281; out-of-state (toll free) 1-800-231-7795; or they should write to The Houston Police Recruiting Division, 401 Louisiana, Suite 601, Houston, TX 77002.

**Police Officer.** Charleston, South Carolina, has a number of entry level positions available in its police department. Career advancement opportunities and openings in law enforcement; competitive salaries, major benefits.

Applicants must be 21 years of age or older; have a valid U.S. Drivers License (S.C. drivers license must be obtained before appointment); be a high school graduate or equivalent (GED); and a U.S. Citizen. (No previous law enforcement experience necessary.) Applicants must successfully pass a series of written, oral, physical and psychological examinations, undergo a complete background and credit investigation; have a clean police record, and be able to produce a valid birth certificate. Ability to communicate effectively with others and to write comprehensive reports, to work under stress, and to work rotating shifts required.

Starting salary (base) is \$11,816.48 year, with automatic salary increases each year. Starting salary 5 percent and 10 percent above base for applicants with associates or bachelors degree, respectively (Associate Degree, \$12,407.72; Bachelors Degree, \$13,029.64). Extensive fringe benefits.

Apply to: Personnel Office, Charleston City Police

Department, P.O. Box 98, Charleston, SC 29402. (803) 577-7434.

**Police Officer.** The Bay Area Rapid Transit (BART) Police Department in Oakland, California, has entry and lateral positions for which it is recruiting on a continuous basis. Requirements for the job include a minimum 21 years of age, excellent health, 20/100 eyesight, correctable to at least 20/30 in both eyes, plus normal color vision, and completion of at least 67½ quarter units or 45 semester units (or a combination of the two) from college.

Salary range for BART police officers, effective 7/1/81, is \$1632 to \$2021.

Applicants should send resume and a copy of official college transcript to: BART Employment Office, 800 Madison Street, Oakland, CA 94607. Cover letter should be marked "BART Police Officer Applicant."

**Police Officers.** Police recruits are being sought to fill out the ranks of the Phoenix, Arizona, Police Department.

Candidates should be between the ages of 20 and 35 (49 if veteran), possess high school diploma or GED, have vision no poorer than 20/100, correctable to 20/20, with no color vision impairments. Height and weight must be proportionate. All applicants must pass written and physical agility exam, polygraph, public safety physical and background investigation.

The salary range is \$1117 per month while in the academy; \$1274 to \$1920 upon graduation. Excellent fringe benefits include 100 percent education reimbursement for job-related classes. Testing is scheduled every six to eight weeks.

Inquiries should be addressed to: Phoenix Police Department, 620 West Washington, Room 165, Phoenix, AZ 85003. Attn: Sgt. C.T. Woodward.

**Deputy Sheriff Trainee Positions.** Los Angeles County, California. There are immediate openings in the largest sheriff's department in the world. More than 5,200 sworn personnel serve an area of approximately 4,000 square miles and 1,900,000 in population through nineteen stations. Salary: \$18,211 to \$23,322 plus many departmental benefits. Deputy sheriffs with departmental experience may earn up to \$27,547 annually.

Applicants must have a minimum of a high school diploma or equivalent, be a U.S. citizen between 21-34 years of age and have weight proportionate to height.

Send inquiries to: Los Angeles County Sheriff's Department Recruitment Unit, Room 460, 211 West Temple Street, Los Angeles, California 90012. Phone: (213) 974-LASD. Filing for the position is open and continuous.

**Training Officer I.** The Ohio Peace Officer Training Academy in London, Ohio, has available a full-time civil service position beginning July 1, 1981, dependent upon budgetary restrictions. Individual should have B.S. degree in law enforcement, education or a related area. Five years law enforcement experience desirable. Teaching and/or training experience helpful.

Primary duties will be in the area of human relations, instructional skills development and supervision. Starting salary is \$12,958 annually with State of Ohio benefit package. Salary increases to \$13,520 following a six-month probation period. Please send resume to: Roger A. Collinsworth, Chief of Advanced Training, Ohio Peace Officer Training Academy, P.O. Box 309, London, Ohio 43140. E.O.E.

## JOB ANNOUNCEMENTS

Do you need new staff members? Recruits? Professional, experienced practitioners? Let Law Enforcement News help. Send announcements to: Law Enforcement News, 444 West 56th Street, New York, NY 10019.



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# UPCOMING EVENTS

## JULY

**6-8.** Sexual Assault Investigative Techniques Seminar. Presented by Harper & Row Criminal Justice Media. To be held in Boulder, Colorado. For further information, contact: Harper & Row Criminal Justice Media, 10 East 53rd Street, New York, NY 10022.

**6-8.** Revolver Retention Course. Presented by Smith & Wesson Academy. Tuition: \$250. For more information, consult: Smith & Wesson Academy, 2100 Roosevelt Avenue, Springfield, MA 01101.

**7-24.** Drugs, Crime and Justice in England Seminar. Presented by the American University. Fee: \$1250. For further information, contact: Arnold S. Trebach, Director, Institute on Drugs, The American University, Washington, D.C. 20016. Telephone: (202) 686-2405.

**8-10.** Art Theft Prevention Seminar. Presented by the Pennsylvania State University. For more details, contact: Edwin Donovan, S-159 Henderson Human Development Building, University Park, PA 16802. Telephone: (814) 863-0277.

**8-10.** Training Techniques for Trainers Seminar. Presented by Highill International. To be held in Chicago, IL. For more information, contact: Highill International, 48 West 48th Street, Suite 1404, New York, NY 10036. Telephone: (212) 777-0003.

**9-11.** Campus Security Course. Presented by the Theorem Institute. To be held in Washington, D.C. Tuition: \$350. For further information, contact: Theorem Institute, 1782 Technology Drive, San Jose, CA 95110.

**13-14.** Productivity Improvement for Criminal Justice and Corrections Seminar. Presented by Highill International. To be held in St. Louis, MO. For further details, consult: July 8-10.

**13-15.** Hostage Response Techniques for Law Enforcement Seminar. Presented by the Harper & Row Criminal Justice Media. To be held in Boulder, Colorado. For further details, see: July 6-8.

**13-17.** 3rd International Affairs Workshop. Presented by the Southwestern Legal Foundation. For further details, consult: Cindy J. Burkell, Southwestern Legal Foundation, P.O. Box 707, Richardson TX 75080.

**13-17.** Internal Affairs/Deadly Force Workshop. Sponsored by the Southwestern Law Enforcement Institute. To be held in Richardson, Texas. For more information, contact: Mr. Shanahan, P.O. Box 707, Southwestern Legal Foundation, Richardson, TX 75080. Telephone: (214) 690-2394.

**20-22.** Police Rangemaster & Firearms Instructor Course. Presented by Clark Davis & Associates. To be held in Turlock, CA. Fee: \$300. For further information, contact: Mr. Marc Bradshaw, Program Coordinator, Davis Clark & Associates, P.O. Box 6524, Modesto, CA 95355, or phone (209) 577-5020.

**22-24.** The Hostage Negotiator Course. Presented by Harper & Row Criminal Justice Media. To be held in Seattle, Washington. Tuition: \$325. For further details, see: July 6-8.

## AUGUST

**4-5.** Street Survival Seminar. Sponsored by Calibre Press and the Streamwood Police Department Fraternal Order of Police Lodge #62. Fee: \$50. For further information, contact: Sgt. Henry J. Jones, Streamwood Police Department, P.O. Box 31, Streamwood, IL 60103. Telephone: (312) 837-022 ext. 50.

**4-7.** State Training Institute. Sponsored by the Florida Council on Crime and Delinquency. For further information, contact: Michael A. Berg, Box 779, Jacksonville, FL 32202. Telephone: (904) 633-4078.

**10-14.** Breathalyzer Maintenance Course. Presented by Smith & Wesson Academy. Tuition: \$150. For further details, see: July 6-8.

**10-14.** Thirty-Sixth Annual Short Course for Prosecuting Attorneys. Presented by Northwestern University. To be held in Chicago, Illinois. Fee: \$350. For further details, contact: Office of Continuing Legal Education, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611.

**11-13.** Juvenile Justice Course. Presented by Theorem Institute. To be held in Phoenix, AZ. Tuition: \$350. For further details, see: July 9-11.

**12-14.** Narcotics, Vice & Intelligence Investigations Seminar. Presented by the Harper & Row Criminal Justice Media. To be held in Chicago, Illinois. For more details, see: July 6-8.

**17-19.** Police Rangemaster & Firearms Instructor Course. Presented by Clark Davis & Associates. To be held in Turlock, CA. Fee: \$300. For further information, see: July 20-22.

**17-19.** Police Executive Media Relations Program. Presented by the Southwestern Legal Foundation. For further information, consult: July 13-17.

**18-20.** Planning & Execution of Undercover & Surveillance Operations Seminar. Presented by Highill International. To be held in Atlanta, GA. Fee: \$325. For further information, see: July 6-8.

**21-23.** Workshop on Computer Crime Investigation. Presented by Assets Protection Journal. To be held in New York City. Fee: \$575. For more details, contact: Paul Shaw, Assets Protection Journal, 500 Sutter Street, Suite 503, San Francisco, CA 94102.

**21-25.** Advanced Firearms — Field School Course. Presented by Smith & Wesson

Suite 40-A, Dallas, TX 75225. Telephone: (414) 363-4944.

**14-18.** Arson Investigation for Public Safety Agencies Seminar. Presented by The Traffic Institute. Fee: \$340. For further details, contact: The Traffic Institute, 555 Clark Street, Evanston, IL 60204.

**14-25.** Supervision of Police Personnel Course. Presented by the Traffic Institute. Fee: \$500. For more details, see: Sept. 14-18.

**17-19.** Basic Course in Crisis Intervention. Presented by the Southwestern Academy of Crisis Interveners. For further information, consult: Sept. 13-16.

**17-20.** Basic Investigative Hypnosis Seminar. Presented by the Law Enforcement Institute Inc. To be held in Atlanta, GA. Tuition: \$475. For further information, contact: Dr. Martin Bense, Law Enforcement Hypnosis Institute, 303 Greenway, Los Angeles, CA 90049.

**21-23.** Workshop on Computer Crime Investigation. Presented by Assets Protection Journal. To be held in New York City. Fee: \$575. For more details, contact: Paul Shaw, Assets Protection Journal, 500 Sutter Street, Suite 503, San Francisco, CA 94102.

**19-21.** Hostage Negotiating Course. Presented by the Traffic Institute. Fee: \$340. For more information, see: Sept. 14-18.

**19-November 13.** School of Police Supervision. Presented by the Southwestern Law

Academy. Tuition: \$175. For further information, see: July 13-17.

**22-25.** Funding Sources for Law Enforcement Workshop. Presented by the Institute of Police Traffic Management. To be held in S. Jacksonville, FL. Fee: \$225. For further information, contact: Director, Institute of Police Traffic Management, University of North Florida, 456781 Johns Bluff Rd. South Jacksonville, FL 32216. Telephone: (904) 646-2722.

## OCTOBER

**1-3.** White Collar Crime Course. Presented by the Theorem Institute. Tuition: \$350. To be held in Kansas City, MO. For further details, consult: July 9-11.

**5-6.** Police Baton Course. Presented by Smith & Wesson Academy. Tuition: \$150. For further information, see: July 6-8.

**5-9.** Medicolegal Death Investigator Training Course. Presented by the St. Louis University School of Medicine, Division of Forensic & Environmental Pathology. Fee: \$175. For more details, contact: Mary Fran Ernst, Division of Forensic & Environmental Pathology, St. Louis University Medical School, 1402 So. Grand Blvd., St. Louis, MO 63104.

**5-9.** Law Enforcement Photography Workshop. Presented by Eastman Kodak Company. To be held in Rochester, NY. For more details, see: July 27-31.

**5-16.** Traffic and Transportation Engineering Seminar. Presented by the Traffic Institute. Fee: \$550. For further information, see: Sept. 14-18.

**6-8.** Campus Security Course. Presented by Theorem Institute. To be held in Kansas City. Tuition: \$350. For further information, see: July 9-11.

**12-14.** Police Juvenile Programs Seminar. Presented by the Traffic Institute. Fee: \$240. For more details, consult: Sept. 14-18.

**19-23.** Hostage Negotiating Course. Presented by the Traffic Institute. Fee: \$340. For more information, see: Sept. 14-18.

**19-November 13.** School of Police Supervision. Presented by the Southwestern Law

Academy. For more details, see: July 13-17.

**19-November 13.** 32nd School of Police Supervision Course. Presented by the Southwestern Legal Foundation. For further details, see: July 13-17.

## NOVEMBER

**2-6.** Sex Crimes Investigation Seminar. Presented by the Traffic Institute. Fee: \$350. For further information, see: Sept. 14-18.

**2-6.** Firearms Instructor Course. Presented by Smith & Wesson Academy. Tuition: \$425. For more details, see: July 6-8.

**3-5.** Jail Administration Course. Presented by Theorem Institute. To be held in Washington, D.C. Tuition: \$350. For further details, see: July 9-11.

**8-11.** Basic Course in Crisis Interveners. Presented by the Southwestern Academy of Crisis Interveners. For more details, see: Sept. 13-16.

**9-11.** Highway Capacity Workshop. Presented by the Traffic Institute. Fee: \$350. For further information, see: Sept. 14-18.

**9-20.** Supervising a Selective Traffic Law Enforcement Program Course. Presented by the Institute of Police Traffic Management. To be held in Jacksonville, FL. For further information, see: Sept. 22-25.

**11-14.** 33rd Annual Meeting of the American Society of Criminology. To be held in Washington, D.C. For further information, contact: Sarah Hall, ASC, 1314 Kinnear Road, Columbus, OH 43212. Telephone: (614) 422-9207.

**19-22.** Basic Investigative Hypnosis Seminar. Presented by the Law Enforcement Hypnosis Institute. Fee: \$475. To be held in Los Angeles, CA. For further information, see: Sept. 17-20.

## SETTING A DATE?

If your agency or organization has a special gathering coming up, let L.E.N. help you get the word out. Send items to Evelyn Muntain, c/o L.E.N.

## Police Products

Items about new or modified products are based on news releases and/or other information received from the manufacturer or distributor of the item. Nothing contained below implies the endorsement of Law Enforcement News.

**MAGAZINE RACK.** A new pistol magazine holder that secures two pistol magazines for either .45 ACP or 9mm semi-automatics has been developed by Armament Systems and Procedures Inc. of Appleton, Wisconsin.

Called the "DCL," the holder secures the two magazine cases by means of an industrial magnet. The device angles the cases toward the body and is secured to a belt with a one-direction snap. More than a third of each magazine is exposed for ready access. The new holder, which is currently available for both the Colt .45 ACP and the Smith & Wesson pistol magazines, is made of leather with solid brass hardware.

Additional information is available from Armament Systems & Procedures Inc., Box 356, Appleton, WI 54912.

**HANDIE-TALKIE.** The ECOM 40U is a new UHF-FM handheld transceiver available from Genave Inc. The unit, operating on the 450-512 MHz frequency range, includes one frequency with the base retail price of \$295. Additional frequencies, up to a total of four, are available at \$42.95 per frequency.

The unit is housed in a Lexan casing and contains a single, two-sided printed circuit board. The ECOM 40U is billed by the manufacturer as "a compatible add-on for existing systems," with back-up units also available.

The company also manufactures the GHT 6U, a two-watt, handheld portable UHF communicator enclosed in metal casing. For more information on the units, write to: Libby Kelley, Genave Inc., 4141 Kingman Drive, Indianapolis, IN 46226.

**LOOK SHARP.** The MC3 is a handcrafted miniature survival knife for law enforcement and security personnel, made individually by the Florida knife craftsman Will Pass and marketed by the Ar-

mament Systems and Procedures Company.

The knife has a 3" blade and is 7" in total length. It comes with what the manufacturer calls a

"skeletalized coffin handle" with a thumb hole, radiused grip and hollow ground blade. The tempered blade is of 1/8" stock.

For additional information, contact: Armament Systems and Procedures Inc., Box 356, Appleton, WI 54911.

**ARTISTIC LICENSE.** The "Drivers License Guide," just released by the company of the same name in Redwood City, California, is a 96-page reference source with reproductions of valid licenses from all U.S. states and Canadian provinces.

The guide details special codes, validation stamps and laminations for each state and province. The current guide also includes 1981 auto plates and stickers as well as bank cards and other forms of identification.

Said to be a low-cost training and reference tool for patrol, traffic and dispatch programs, the book is available from: The Drivers License Guide Co., 1492 Oddstad Drive, Dept. N, Redwood City, CA 94063.

# LAW ENFORCEMENT NEWS

June 8, 1981

## The ghost that haunts policing



Ernesto Miranda may be dead, but his legacy for criminal justice lives on. His latest bequest is described on **Page 1.**

### Also in this issue:

**A prescription for crime control:** Dr. Gerhard Mueller, the U.N. crime specialist, takes a hard look at criminal justice in the U.S. and offers a tough pill to swallow. The doctor is in on **Page 8.**

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